SUPREME COURT OF THE UNITED STATES.

No. ~~97~~ 16.

JAMES ERWIN, APPELLANT,

VERSUS

HUGH M. BLAKE.

APPEAL FROM THE CIRCUIT COURT U. S. FOR WEST TENNESSEE.

THE UNITED STATES, *ss.*

The President of the United States to the Judge of the Circuit Court of the United States for the district of West Tennessee—*Greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you, or some of you, between Hugh M. Blake, complainant, and James Erwin, defendant, in chancery, a manifest error hath happened, to the great damage of the said defendant, as by complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, we command you, if judgment he therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the *Supreme Court of the United States,* together with this writ; so that you have the same at Washington, on the third Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings, aforesaid, being inspected by the said Supreme Court, may cause further done therein to correct that error, what of right, and according to the law and the custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court, the first Monday of January, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States the fifty-third.

N. A. McNAIRY,
Clerk of the Circuit Court for the District of West Tennessee.

The United States' Seventh Circuit, District of West Tennessee, to Hugh M. Blake, —Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the 7th circuit, in the district of West Tennessee, wherein James Erwin is plaintiff in error, and Hugh M. Blake defendant, to show cause, if any there be, why the judgment ren-

dered against the said Jame Erwin, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, on this __ Monday of January, in the year of our Lord, 1829, and of the independence of the United States the 53d.

N. A. McNAIRY, *Clerk.*

COUNTY, *ss.*

On this day of in the year of our Lord one thousand eight hundred and twenty- personally appeared before me and being duly sworn, deposeth and saith, that on the day of he delivered a copy of the above citation to

I acknowledge service of the above citation, this 23d January, 1830.

WILL. A. COOK,
Attorney for Blake, the appellee.

At a circuit court of the United States, continued and held at Nashville, in and for the district of West Tennessee, on the 23d day of June, 1829, and of the independence of the United States the fifty-third :

HUGH M. BLAKE, Complainant,
vs.
JAMES ERWIN, Defendant,
} *In Chancery.*

Be it remembered, that heretofore, to wit, on the 27th day of June, 1827, exhibited his bill of complaint in this court; which follows in these words:

The honorable the Judge of the circuit court of the United States, sitting for the 7th circuit, in the district of West Tennessee, at Nashville.

Humbly complaining, your orator, Hugh M. Blake, a citizen of the State of Tennessee, one of the U. States of America, and resident in the district of West Tennessee, would show to your honor, that, on the 3d day of September, 1824, he being seized and possessed, in his own right, of a fee simple estate in and to a certain tract of land, containing about three hundred and fifty acres, situate in the county of Lincoln, in the district aforesaid, bounded on the south by the land of *Robert Cox*, on the north by that of *Robert Wilson*, on the east by the land of Joel Cummings, and on the west by the lands of John Marr and *John W. Blake;* on the said 3d of September, 1824, the same was sold by the sheriffs of said county of Lincoln, by virtue of an execution issued from the chancery court, for the sixth judicial circuit in the said State, held at Columbia, upon a decree rendered by said court in favor of a certain *Jas. Britton*, executor of *Joseph Britton*, dec'd, against your orator, together with several others. Upon which sale the said *Jas. Britton* became the purchaser, for the price of one hundred and sixty-two dollars; to whom the said sheriff, *Wm. Husbands*, immediately executed his deed, as sheriffs, aforesaid, for the same. Your orator further represents to your honor, that a certain *James Erwin*, a citizen of the State of Louisiana, one of the said U. States, in the month of September, 1823, had obtained a judgment against your orator, with others, who were bound as securities of a certain *Brice M. Gorman*, on the said liability, for a sum of something upwards of twelve hundred dollars; which judgment remained unsatisfied until about the 21st of August, 1826,

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at which time a certain John P. McConnell, having previously obtained an interest in said judgment in favor of said Erwin, by agreement with said Erwin, as your orator is informed and believes, the particulars of which are unknown to your orator, on the said 21st of August, 1826, in behalf of said Erwin and himself, redeemed from the said James Britton the interest he had purchased in said land, by advancing the said sum of one hundred and sixty-two dollars, with interest, at the rate of ten per centum, to the said Britton, and offering to credit your orator on his said judgment against him, the sum of one thousand dollars, in pursuance of the provisions of an act of the Legislature of Tennessee, passed in the year 1820, chapter eleven; and the said Erwin received a deed, made to him for the said land by the said Britton, bearing date the said 21st August, 1826, which, on a copy thereof, is herewith exhibited, marked A, and prayed to be taken as a part of this bill. Your orator states, that the said McConnell remained interested in the balance of the said judgment against your orator, by virtue of an understanding and agreement with said Erwin, as he is informed and believes; and your orator, for the purpose of availing himself of the privilege of redeeming from said Erwin the interest he had thus acquired in said land, according to said act of Assemby, before the expiration of the two years from the day of the sale thereof to said Britton, paid to a certain James Fulton, Esq. the attorney and agent of the said James Erwin, the sum of twelve hundred and seventy-six dollars and seventy cents, comprising the whole sum which had been paid by said Erwin and McConnell to said Britton, as aforesaid; and a large portion, to wit, $1094 70 cents of the judgment aforesaid, in favor of said Erwin; leaving a balance of said judgment of two hundred and twenty-three dollars and fifty-five cents, which your orator procured a certain Robert Dixon to assume the payment of to the said McConnell, who was, to that extent, interested in said judgment, as aforesaid, as your orator is informed and believes; and which assumpsit of the said Robert, was accepted then and there by the said John P. McConnell. Your orator further charges, that the said James Fulton was then and there fully authorized and empowered, as your orator is informed and verily believes, by the said Erwin to receive said money, on the application of your orator to redeem said land; and that said McConnell was authorized, and had a right, by virtue of his aforesaid understanding and agreement with said Erwin, as he is informed and verily believes, to receive said part of said judgment, and release your orator therefrom, as is above stated as being settled with said McConnell, by the assumpsit of the said Dixon. Your orator further charges, that the said Fulton has, on the demand and request of said Erwin, paid over to the said James Erwin the aforesaid sum of money received from your orator, as he is informed by said Fulton, and of which your orator has no doubt. Your orator is informed and advised, that he is entitled to a redemption of the said tract of land from the said Erwin; and that he has complied, in due time, with all the requisites of the law to entitle him to a reinvestature of the right to said tract of land; yet the said James Erwin, whom your orator prays to be made defendant to this bill, combining and confederating with others, whose names to your orator is unknown, who, when discovered he prays to be made parties, with apt words to charge them now, sets up many deceitful and fraudulent pretences, and refuses to convey said land to your orator, or to account with your orators and refund every part of the money so paid, but pretends that he is entitled to both land and money; and, persisting in this unjust pretence, has caused an action of ejectment to be commenced in

your honorable court, for the district aforesaid, against your orator, and seeks, thereby, to turn your orator out of the possession of said land: which action is still depending before your honor on the law side of this court. In tender consideration of the premises, and for as much as your orator is remediless by the strict rules of the common law, and is wholly unable to defend said action at law, on account of the legal title being vested, as aforesaid, in the said Erwin, and is only relievable in this honorable court, where matters in the premises are properly cognizable.

To the end, that the said James Erwin and his confederates, when discovered, may full, true, and perfect answer make, upon their corporeal oath, to all and singular the matters and charges herein before set forth; that the said James may be perpetually enjoyed from further proceedings with his said ejectment; that he may, by a decree of this honorable court, be compelled to reconvey to your orator all the right, title, and interest with which he stands vested in law, by virtue of the conveyances and sales aforesaid; and that all title may be divested out of the said James, and vested in your orator, to the said tract or parcel of land; and that your orator may have such other and further relief as he is, in equity and good conscience, entitled to, and which may be suited to the nature of his case; he prays your honor to grant him writs of injunction and subpœna, &c. and your orator, as in duty bound, will ever pray, &c.

Your orator states this is the first application ever made for an injunction in this case.

GRUNDY, RUCKS, & ANDERSON, *Solicitors.*

DISTRICT OF WEST TENNESSEE, *ss.*

Hugh M. Blake, the complainant in the foregoing bill, makes oath, that the matters and things in said bill stated, as of his own knowledge, are true; and those matters and things therein stated, not of his own knowledge, he believes to be true.

H. M. BLAKE.

Sworn to and subscribed in open court, June 21st, 1827.

N. A. McNAIRY, *Clerk,*
By JNO. CARSON, *his deputy.*

I acknowledge myself the complainant's security, in the penalty of five hundred dollars, to prosecute this bill with effect, or payment of all costs and damages in case of failure therein. Witness my hand and seal, this 21st day of June, 1827.

F. PORTERFIED, [L. S.]

This indenture made and entered into this 21st day of August, in the year of our Lord eighteen hundred and twenty-six, by and between James Britton, of the town of Shelbyville, Bedford county, and State of Tennessee, of the one part, and James Erwin, of the same county and State, of the other part, *witnesseth:* That, whereas, on the 3d day of September, 1824, the said James Britton became the purchaser, at sheriff , of the tract of land and premises, hereafter described, as the property of Hugh M. Blake, situate, lying and being in said county of Lincoln, on Coin creek, and bounded on the south by Joel Cammion, on the north by the lands of Robert Wilson, on the west by the land of ; the quantity of acres not known, but supposed to contain three hundred acres: the same place where said Blake now lives. Which said tract of land was sold by virtue of a writ of *fieri*

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facias, issued from the clerk's office of the chancery court of the sixth judicial circuit, holden at Columbia, in the State of Tennessee, at the instance of James Britton, executor of Joseph Britton, dec'd, and was subject to be redeemed within two years from the date and day of sale, under the rules and instructions, by an act of the General Assembly, in that case, made and provided; and, whereas, the said tract of land was sold to the said Jas. Britton for the sum of one hundred and sixty-two dollars; and, whereas the said Jas. Erwin, in the month of November, 1825, was, and yet is, bona fide creditor of the said Hugh M. Blake in the sum of above twelve hundred dollars, and more, as appears by a judgment rendered, and entered of record, in the circuit court of Lincoln, and State of Tennessee; which judgment was rendered in the month of September, 1823; and, whereas, the said Jame Erwin did heretofore, in the month of November, in the year 1825, by his agent, John P. McConnell, tender and pay over to the said James Britton the aforesaid sum of one hundred and sixty-two dollars, being the amount bid and paid by the said Britton for the said land; also the further sum of twenty dollars, that being ten per centum per annum interest accruing on the said sum of one hundred and sixty-two dollars; and, at the same time did offer and agree to credit the said Hugh M. Blake with the further sum of one thousand dollars upon the aforesaid judgment. Now, therefore, this indenture witnesseth, that the aforesaid James Britton, in consideration of all said premises and said sums of money, amounting to one hundred and eighty-two dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, and, by these presents, doth give, grant, bargain, and sell, unto the said James Erwin the aforesaid tract of land, together with all the houses and buildings thereon, with the appurtenances. To have and to hold the said tract of land and buildings, with the appurtenances, to the only proper use and behoof of said James Erwin, his heirs and assigns forever, in a ample and full a manner as the said Britton is authorized, by virtue of the sale, purchase and redemption, aforesaid. In testimony whereof, the said James Britton hath hereunto set his hand, and affixed his seal, the day and year above written.

JAMES BRITTON, [SEAL.]
Executor of Jos. Britton.

Attest:

JOHN EAKIN,
A. MOSTIN.

State of Tennessee, Bedford County Court. February Term, 1827.

I, James McCissick, clerk of the court of pleas and quarter sessions of the county of Bedford, in the State aforesaid, do hereby certify, that the execution of the within deed, from Jas. Britton, as executor of the last will and testament of Joseph Britton, dec'd, to Jas. Erwin, was proven in open court by the oaths of John Eakin and Abraham Morton, the subscribing witnesses thereto, and ordered to be certified for registration. In witness whereof, I have hereunto set my hand, and affixed the seal of the court of office, in Shelbyville, this 16th day of February, 1827.

JAMES McCISSICK, *Clerk*.

Registered 22d February, 1827.

State of Tennessee, Lincoln County, Register's Office. May 21st, 1827.

I, Robert H. McEwen, Register for Lincoln county, do certify, that the foregoing deed, and certificate thereon, is a true copy from the books in my office.

R. H. McEWEN, *R. for L. C.*
By S. E. GILLILAND.

And, whereupon, writs of subpœna and injunction issued agreeably to the prayer of the said bill. Whereupon the defendant, by his attorney, comes; and, on the 18th day of September, 1827, filed his answer to said bill, in the words and figures following, to wit: The answer of James Erwin, a citizen of the State of Louisiana, to the bill of complaint of Hugh M. Blake, a citizen of the State of Tennessee, filed in the circuit court of the United States, for the district of West Tennessee. This defendant, saving and reserving to himself, now, and at all times hereafter, all and all manner of benefit of exception to the many untruths, uncertainties, and insufficiencies, in said bill contained, for answer thereto, or so much thereof as he is advised it is material for him to answer unto, he answereth, and saith: It is true that the tract of land, mentioned in the complainant's bill, was sold, as his property, under a decree obtained by James Brittain, executor of Joseph Brittain, deceased, the date of which decree is perhaps correctly stated in said bill; but a reference to the decree itself will more fully show. It is also true that, at said sale, the said James Brittain became the purchaser of said land for the price of one hundred and sixty-two dollars, or thereabouts, and received a deed therefor from the sheriff of the county in which the land lies, who effected said sale. It is also true that, at the date of said sale, this defendant was a judgment creditor of the said Hugh M. Blake; which judgment was founded upon a note given by Brice M. Garner to this defendant, upon which suit was brought by this defendant, against the said Brice M. Garner, in one of the inferior courts of Lincoln county, where judgment was obtained; from which judgment the said Brice M. Garner appealed, or took a writ of error, to a superior court, and the said Hugh M. Blake become one of the securities of the said Brice M. Garner for the prosecution of the same, where the judgment of the inferior court was confirmed against the said Garner and his securities. Said judgment was in full force, unreversed and unsatisfied, at the date of the sale of said land to the said James Britton. It is not true, as stated in said bill, that John P. McConnell had any interest in said judgment; but the following is a statement of the nature of said John P. McConnell's connexion with said transaction: Before the institution of any suit at all upon said note, this defendant apprehending that said Garner was about to fail, (as he afterwards actually did,) and believing that J. P. McConnell, who resided in the same town with him, would have a better opportunity of securing the money than this defendant, who was a non-resident, he actually sold said note to the said J. P. McConnell, and received from him between two and three hundred dollars worth of horses towards payment for said note, and took his, the said McConnell's note, payable to this defendant, for the balance. When the said McConnell's note became due, this defendant sued him upon it, and the said McConnell also caused a suit to be instituted against Gorman upon his note, in the name of this defendant, but not for his, the said McConnell's use; for, the said McConnell always insisted that, on account of the friendship and understanding between him and this defendant, and the difficulties

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which the said Garner made about the payment of his said note, alleging, as he did, that he had set offs against this defendant, to a large amount; that his, the said McConnell's, contract with this defendant ought to be rescinded; and that, upon this defendant's coming to Tennessee, he would have it rescinded. Accordingly, when this defendant saw the said McConnell, they entered upon the consideration of their mutual dealings and transactions, and agreed to rescind, and did actually rescind to the said contract respecting the sale of said note of Garner to the said McConnell. By the terms of this agreement, this defendant was to pay the said McConnell for his horses, relinquish any demand against the said McConnell for the residue, and the note given by Garner, upon which suit was then depending in the inferior court, and with which the said Hugh M. Blake had not, at that time, any connexion, was to belong to this defendant again, and the suit already depending upon said note, in the name of this defendant, was to progress for his benefit. So that, by this arrangement, this defendant and the said J. P. McConnell were put precisely in the situation in which they would have been, provided they had never contracted about the note of the said Brice M. Garner. Since that time this defendant has actually paid said McConnell for his horses, and has paid all the lawyers' fees, incurred in the prosecution of said suit against Garner, and has paid the cost of the suit instituted against the said McConnell, by this defendant; and has fully, and in every respect, carried into effect the said contract of rescession with the said McConnell. After the rendition of judgment, as aforesaid, against the said Garner and his securities, and after the purchase of said land by Brittain, as aforesaid, the said McConnell, as the agent merely, of this defendant, and acting under the instructions of this defendant altogether, redeemed said land from Britton, the purchaser, by paying him the amount of his purchase, and the other advances required by law, and offered, at the same time, to credit the judgment of this defendant with the balance, after deducting the sum paid to Britton. The money actually paid to Brittain by McConnell, he, McConnell, owed to this defendant, and the credit offered for the balance, was done by the direction and authority of this defendant. This was the full extent of the agency of the said McConnell relative to said judgment. The said Brittain afterwards executed to this defendant alone, and for his exclusive benefit, a deed for said land. As is above stated, no person was instructed in said judgment; and, so far as the said Blake was concerned in redeeming said land, he had to look to this defendant above. A few days before the expiration of the time limited for redemption, this defendant was in Fayetteville, when Garner wished him to take some Alabama notes, which were greatly depreciated, at par, towards the redemption of said land, in part, which this defendant very promptly rejected; and said to the said Garner, explicitly, in the presence of James Fulton, Esq. and another man, that he would take nothing but specie; and then and there required of the said James Fulton, who was his lawyer in said case, to exact specie and nothing else, for that he would receive nothing else. This defendant was also informed by his said counsel that the contract, upon which the judgment was founded, was such a one as for which the specie could be required. As to the allegation, that the amount of said judgment, &c. was paid to the said James Fulton in money and in the assumpsit of Dixon, which was accepted by McConnell, &c. this defendant denies the same, as made, to be true. Some three or four days, or thereabouts, as this defendant is informed, before the expiration of the time limited for redemp-

tion, the said James Fulton, this defendant's lawyer, being about to leave home for some court, and suspecting that as Brice M. Garner, who was clerk of the county court, who was bankrupt, desperate, and unprincipled, and who was also a party to said judgment, might receipt, as clerk, to Blake for the amount of the redemption money, and involve this defendant in another course of litigation, he the said Fulton, under those circumstances, requested his brother-in-law, Francis Porterfield, to call at the clerk's office several times in each successive day, for the remaining days within which the redemption could be made, and inquire if the money had actually been paid into the office, with a view to detect Garner in the trick which he suspected he intended, and prevent him from resorting to it. This defendant knows nothing of the said Porterfield, as his agent, gave him no authority, and does not recognize him in the capacity of an agent; nor was the said James Fulton an agent further than, as lawyer, he was required to use the specie paid, and nothing else; and this defendant disavows his authority to any other extent. This defendant is informed, and believes, that the said Porterfield called, from time to time, at the clerk's office, and the money was not paid. This defendant is also informed, and believes, that on the last day on which land could be redeemed, the said Garner, Blake, Porterfield, and McConnell met together in Fayetteville, in the absence of this defendant, and of his lawyer, the said James Fulton, and the money, with which to redeem the land, could not be raised. That the said Porterfield then and there availed himself of the situation of Blake, to buy his land; and did contract for it at a redeemed price; and, in consequence thereof, undertook to account for the said redemption money, except the part assumed by Dixon: but actually paid no money at the time; nor was any paid, or tendered, until the time of redemption had gone by. This defendant expressly denies the authority of the said Porterfield throughout; and does, and always has, refused to be bound by his interference in said transaction. This defendant is also informed, that the said John P. McConnell, on the said last day for the redemption of said land, did undertake, not as having any interest in said judgment, nor as the agent of this defendant, but upon his own authority, supposing this defendant to be indebted to him in that amount, to accept the assumpsit of said Dixon for the part of said judgment not agreed to be settled by the said Porterfield, as aforesaid. But this defendant denies the authority of the said McConnell, in this respect, and never has sanctioned his said act. After the lapse of the time for redeeming said land, this defendant wrote to the said James Fulton, requesting him to send him the money that had been paid for the redemption of said land, provided it had been paid according to his (this defendant's) requisition, that is, the whole of it in specie; for, as before stated, this defendant had told said Fulton and Garner that he would exact the specie; that he would take nothing else, and that he would avail himself of all privileges that the law allowed him. When this defendant wrote this letter he had no knowledge of the aforesaid arrangement between Porterfield, McConnell, Garner, and Dixon, and had no reference thereto either in his said letter or in his mind. In answer to said letter, the said Fulton wrote to this defendant an apologetic letter, the object of which was to excuse the said Porterfield, and to account for his, the said Fulton, not preventing said arrangement, upon the ground of his necessary absence; which letter this said defendant will produce upon the hearing of this cause. The said Fulton, at the same time, sent to this defendant the amount agreed to be

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paid by said Porterfield, part in bank notes and part in specie, which this defendant refused to receive, and never has received; nor has he received, or consented to receive the balance assumed by Dixon. This was the first information this defendant obtained relative to the prosecution about the redemption of said land. Afterwards, perhaps in the month of December, 1826, this defendant received a letter from the said Hugh M. Blake, which he will produce on the hearing of this cause. From the tenor of which is manifest, that said land has not been redeemed; and the object of which was to induce this defendant to accede to said arrangement; which he refused to do.

This defendant denies all fraud and combination, &c. with which he is charged, without this, &c. and prays to be hence dismissed with his costs, in this behalf, most wrongfully sustained.

THOS. WASHINGTON,
Sol'r. for defendant.

This day, personally appeared before me, Nathaniel A. McNairy, Clerk of the circuit court of the United States, for the district of West Tennessee, James Erwin, the above named defendant, and made oath that the matters and things which are stated in the above answer, as of his own knowledge, are true; and that those which are stated, from information, he believes to be true.

J. ERWIN.

Sworn to, and subscribed before me, this 18th September, 1827.

N. A. McNAIRY, *Clerk.*

And thereupon, the said complainant, by his attorney, files his replication, the defendant's answer, as follows, to wit:

This repliant, saving and reserving to himself all and all manner of exception to the many untruths, uncertainties, and insufficiencies, in said answer contained, saith, he will ever maintain, and prove his said bill of complaint to be true certain, and sufficient in law, to be answered unto by said defendant; and that said answer is untrue, uncertain, and insufficient. All which matters and things this repliant is ready and willing to aver, maintain, and prove, as this honorable court may direct; and humbly prays, as in and by said bill, he has already prayed.

GRUNDY, RUCKS, & ANDERSON,
For Complainant.

The following were the depositions read on the trial of the above cause:

[COMMISSION.]

The President of the United States of America, to Stephen Alexander, Gentleman—Greeting:

Know ye, that trusting to your diligent and provident circumspection, do require you, that, at such certain time and place as you shall appoint, to call, and cause to come before you, James Fulton, Andrew A. Kincannon, Robert Dickson, and John P. McConnell, witnesses on behalf of Hugh M. Blake, in a certain matter of controversy in the circuit court of the United States, in the 7th circuit, for the district of West Tennessee, depending between Hugh M. Blake and James Erwin, defendant, and them diligently examine

touching the same, in solemn form, on oath or affirmation; and such examination having received, you shall distinctly, plainly, and without delay, certify, under your hands and seals, enclosed, together with this writ, to our said court, to be holden at Nashville, on the second Monday in June next.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year 1828, and the 52d year of our independence.

N. A. McNAIRY, *Clerk.*

STATE OF TENNESSEE, *Lincoln County.*

In pursuance to the enclosed commission, to me directed, from the circuit court of the United States, held at Nashville, Tennessee, I have caused James Fulton and Robert Dickson and John P. McConnell, Andrew A. Kincannon, to come before me, on this 31st May, 1828, at the house of Robert Dickson, in the county of Lincoln, town of Fayetteville, witnesses on behalf of Hugh M. Blake, in a certain matter of controversy, now depending in said court, in which Hugh M. Blake is complainant, and James Erwin is defendant: And said James Fulton and Andrew A. Kincannon, Robert Dickson and John P. McConnell, being first duly sworn upon the Holy Evangelist of Almighty God, deposeth and saith.

The deposition of James Fulton.

Question 1st, by complainant's counsel. Are you acquainted with the parties to this suit?

Answer. I am acquainted with both the plaintiffs and defendant in the above.

Question 2d, by the same. Were you originally employed in the suit of James Erwin against Brice M. Garner? If not, at what time were you employed, if at all, and by whom?

Answer. During the pendency of a suit at law in the circuit court of Lincoln county, Tennessee, in the name of James Erwin against Brice M. Garner, founded upon a note, John P. McConnell employed me to attend to the suit. From McConnell, I then understood he was interested in that suit, but to what extent I do not now remember. I did not commence the suit; and I think the declaration is in the hand writing of William B. Martin. I obtained judgment in the circuit court, and I think the defendant prosecuted a writ of error to the Supreme Court. Afterwards, I think, Garner filed a bill in the circuit court of Lincoln county against Jas. Erwin, and, perhaps, others, enjoining the collection of the money upon the judgment obtained in the Supreme Court. In the above cause, after the answers of the defendants were filed, John P. McConnell employed me to attend to the case for the defendants. I still understood from McConnell he was interested in the case; and, in putting my name upon the docket, I put it thus: Fulton for McConnell.

Question 3d, by same. Were you at any time requested by James Erwin to attend to this suit, or to attend to the collection of the money after the dissolution of the injunction or decree in equity? If yea, state as precisely as you can at what time, what was the extent of your authority, and how you executed it?

Answer. I do not think I ever was employed by James Erwin, or spoken to him upon the subject, until after the termination of the above suit in equity; at all events, until after the dissolution of the injunction, and not until

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after McConnell had redeemed the land from Britton. I think that McConnell redeemed the land from Britton some time before the conveyance of the land by Britton to Erwin. It was expected, and believed by myself, that the time for the redemption of the land would expire on the 2d day of September, 1826. Some short time before that period, and in the month of August, 1826, as I believe, James Erwin, in the town of Fayetteville, Tennessee, and in the presence of Brice M. Garner and Andrew A. Kincannon, told me, that if, from an examination of the note, I was of opinion that he, Erwin, could require specie, to require specie, and to receive nothing but the specie in payment of his demand; and to make him, or them, buy the specie. And said Erwin then called upon said Kincannon to bear witness that he had appointed me his attorney in the busines, and that I was authorized to receive the money upon the above claim, and that whatever I should do upon the subject he would abide by. I told James Erwin, on the same day, that I was not certain, but believed, he could require specie; and upon the same day, and after said Erwin left Fayetteville, I went to the clerk's office, and finding the note, upon which Erwin's claim was founded, bore date 14th October, 1819, I then believed, and am yet of opinion, he could require the payment of specie.

Question 4th. Were you present when the money, for the redemption of the land of Blake, was paid by the parties, or any one of them? If not, who was present; and whether you had requested any person to attend to this business for you, in your absence, and also for Erwin: what was the extent of the authority of him who did attend for you, and what was done by the person who attended, and in what capacity?

Answer. On the 4th Monday in August, 1826, the county court of Franklin county, commenced; and on that, or the day preceding, I went to Winchester for the purpose of attending to business on behalf of the State, as I was at that time solicitor for the 8th district, which included Franklin county. Before I left Fayetteville for Winchester, I handed the deed from Brittain to Erwin to Francis Porterfield, of Fayetteville, and told him I was apprehensive Garner would, in my absence, as clerk of the county court, receipt for the money, and that Erwin would be thus put to the trouble and expense of a law-suit to get the money out of Garner. I further requested Porterfield to show Garner, and perhaps Blake, the above deed, and to inform them of the nature of his authority; and to go to the clerk's office frequently and make inquiry upon the subject, and see that the fraud should not be practised, of which I was apprehensive. Said Porterfield undertook to attend to this business, according to my request. I then expected, and so told Porterfield, that I would be at home on Friday, the 1st of September; but my business at Winchester, in court, detained me until Saturday evening, and I did not return home until Sunday, the 3d of September. Upon my return, Porterfield informed me that the money was not all paid, and that only eight or nine hundred dollars had been paid, as well as I now remember; and that Dickson, and perhaps Husbands, had assumed the payment of the balance. And said Porterfield further informed me that he had pledged himself, on my behalf, that I, on behalf of Erwin, should take no advantage of the management of the money on Saturday, the 2d of September. Said Porterfield was not, directly or indirectly, authorized by me to give any such pledge. I felt that I was placed in a delicate situation, and that I should be compelled to violate the instructions of Erwin, or to place my friend and brother-in-law, Porterfield, in an unplea-

sant attitude, who, at my request, had undertaken to attend to this business. Thus situated, I took upon myself the responsibility of departing from the instructions of Erwin; and I did sanction the above acts of Porterfield, and adopted and agreed to them as my own.

Question 5th, by same. State, if you know, at what time the remainder of the money was paid, and in what manner; and whether you did at any, and what, time pay to James Erwin any, and what amount of money in satisfaction of said judgment?

Answer: At this distance of time I do not recollect, distinctly, who paid me the balance of the money; but believe it was Dickson. About the 9th of September, 1826, I sent by William Talbert to James Erwin, on the above claim, $1305 17 cents, as will appear by the receipt of said Talbert, given to me on that day; which receipt is now before me, and is marked A, and is to be enclosed and accompany this deposition. I did, myself, advance between one and two hundred dollars of the sum thus lent, which Dickson agreed to pay, and in a short time afterwards repaid me. According to my calculation, there was still due to Erwin $200; which I afterwards refused to receive, because instructed by letter from Erwin not to do so.

Question, by same. Did you at any time receive a letter or letters from James Erwin upon the subject of his claim upon Garner and Blake? If so, what were the instructions contained in those letters, and what are their dates, respectively?

Answer. I received three letters, purporting to be from James Erwin; but I am not acquainted with the hand writing of said Erwin, never having seen him write, that I now remember. These are the only letters which I remember to have received from said Erwin, upon the subject of this demand, and said letters bear date the 6th, 8th, and 12th of September, 1826; which letters are herewith filed, marked B, C, D.

Question, by same. State, if you know, at what time Francis Porterfield purchased the land above spoken of, from Hugh M. Blake; and state further, if you know, what is the value of said land per acre?

Answer. I do not know when Porterfield purchased this land, nor do I know the value of it.

Cross-examined by Col. Andrew Erwin, for James Erwin.

Question 1st, by defendant. Is the letter now shewn you, purporting to be from you to James Erwin, dated Fayetteville, September 9th, 1826, and about to be enclosed in this deposition, in your own proper hand writing; which letter is marked E?

Answer. Said letter is my own proper hand writing.

Question 2d, by same. Does that letter contain a true and full detail of the circumstances and transactions relative to the redemption of Hugh M. Blake's land from James Erwin, so far as you were concerned therewith, or have any knowledge?

Answer. So far as that letter details the circumstances relative to the redemption of said Blake's land, it is correct, with this explanation: my present remembrance is, that Porterfield informed that but 8 or 9 hundred dollars was paid on Saturday, whereas the letter states the payment, on that day. of $1043. All I know upon this subject is from the information of Porterfield. Further, that letter states that there was paid into my hands all except $200; that is $1305 17. This is to taken with the explanation which I have given in answer to complainant's 5th interrogatory, when I

have stated the amount advanced, which was repaid me by Dickson. As to said letter containing a full detail of all the circumstances relative to the redemption of said land, I state that, probably, many circumstances accompanying said transaction which are not mentioned in said letter: amongst others, I state, that I told Porterfield that it was a specie debt, and that if the parties paid paper money, not to receive it, unless they paid it at such a discount as would make it fully equal to specie. There were, perhaps, many other circumstances attending this transaction which I might probably recollect if my attention was pointed to them by an interrogatory.

Question 3d, by same. Were you the agent of James Erwin, relative to the redemption of said land, or were you merely his lawyer in the suit of James Erwin against Garner, to which Blake was also a party defendant?

Answer. My answer to the complainant's third interrogatory, contains my answer to this; and whether I accepted the situation of agent or lawyer, depends upon which I have then stated.

4th, by same. As lawyer of James Erwin, had you any other authority than merely to receive the money, if the land should be redeemed before the expiration of proper period?

Answer. James Erwin never gave me any other authority upon the subject, that I now remember, than that which I have stated in my answer to complainant's third interrogatory; and I refer it to the proper tribunal to determine the extent of that authority.

5th, by same. Had you any authority to extend the time for redeeming the land, or to accept any thing else than the money, actually due and demandable, according to law, as a redemption?

Answer. I had no authority upon the subject, mentioned in this interrogatory, but such as I derived from the instructions of said Erwin, as dictated in my answer to complainant's third interrogatory.

6th, by same. Had you any authority to appoint a sub-agent relative this redemption; and did you appoint one; and what was the extent of his authority, as derived from you?

Answer. There was nothing said by Erwin to me upon the subject of the appointment of a sub-agent; and whether I had or had not authority to appoint one, will depend on the nature of my authority; the extent of which, I have stated in answer to complainant's third interrogatory. I did procure Porterfield to attend to the business in my absence, as I have stated. The extent of his authority, I have stated in my answer to complainant's fourth subsequent interrogatory.

7th, by same. Had you not positive instructions from James Erwin to require of Blake specie for the redemption of his land, and nothing but specie?

Answer. I have stated, in an answer to complainant's third interrogatory, the nature of my instructions upon this subject.

8th, by same. Did you not communicate these instructions to Mr. Porterfield, upon your leaving home for Winchester, and tell him to accept of nothing but specie, if there should be an offer to redeem in your absence?

Answer. I told Porterfield that it was a specie debt, and that Erwin had required of me to exact the specie; and that if he received, and the parties paid any thing but the specie, not to receive it unless they paid paper at such a discount as to make it fully equivalent to specie; and I never expected or authorized him to receive less than the full amount of Erwin's claim.

9th, by same. Was not the demand, upon which Erwin's judgment

against Garner and Blake was founded, of such a nature as not to come under the operation of our statute, relative to the endorsement of executions?

Answer. It was then, and yet is, my opinion, that Erwin could require the specie, as I have stated in answer to complainant's third interrogatory.

10th, by same. Did not some circumstances exist, or transpire in the progress of the suit, which rendered it proper that Erwin should require the specie, and what were they?

Answer. I believe Garner delayed the payment of the money as long as long as he could possibly do so; and, because Erwin would not take lands in the western district from Garner in payment of the debt, as I understood from the parties, Garner appeared very angry, and abused Erwin. For these causes, I did not think that Erwin was bound in honor. humanity, or courtesy, to take from Garner any thing in payment of his demand, but what the law allowed him.

11th, by same. Did James Erwin ever sanction the arrangement that was made between Blake, Porterfield, and Dickson, relative to the redemption of said land?

Answer. James Erwin never, in any conversation with me, sanctioned said arrangement. Whether the correspondence between said Erwin and myself has any bearing upon the subject, will be seen by reference to said Erwin's letters, which I have heretofore referred to.

12th, by same. Was any specie ever paid by Blake, or any person for him, towards the redemption of said land; and how much?

Answer. I do not know myself whether Blake was paid one cent for the redemption of this land; but, from information received from Porterfield, my impression is, that Dickson and Garner paid all that was advanced for the redemption of the land. I do not know what amount was paid in specie at the time, and what amount was paid in paper: This I do now remember, that after I returned home, Porterfield paid me some specie and some paper, but the amount of each I do not remember; and, subsequently, I exchanged some of the paper for specie, at two per cent. discount; but, what amount I thus exchanged I do not remember.

13th, by same. Did James Erwin everaccept the bank notes, or other security, taken by Porterfield on the last day for the redemption of said land?

Answer. James Erwin never, to my knowledge, said or done any thing accepting or rejecting said bank notes, or other security, taken by Porterfield, other than what is indicated in the letters above referred to, which are addressed to me, and purporting to be from James Erwin.

14th. Why was the 10 per cent. per annum charged after the 23d Nov. 1825, as stated in your letter to James Erwin?

Answer. My impression is, that McConnell redeemed the land from Brittain, 23d November, 1825, and bid the amount of the judgment in the name of James Erwin, although deed was not executed for *the* same time thereafter, and my belief is, that McConnell with a paper writing from Brittain showing this; but, of this, I am not absolutely certain.

15th, by same. Was any money, either in specie or bank notes, actually paid to Porterfield or any body else, within the time limited by law for the redemption of said land, or had not the whole time of redemption gone by before the payment was actually made; and was it not subsequently made in pursuance of an arrangement, entered into on the last day, between Porterfield, Dickson, Blake, and McConnell?

Answer. Of my knowledge, I know nothing upon this subject. My re-

membrance now is, that Porterfield informed me, upon my return home, that the parties had actually paid eight or nine hundred dollars on Saturday, the 2d of September. It is possible I may be mistaken about the sum.

16th, by same. Where was James Erwin when this transaction took place? Was he not out of the State? How soon did he afterwards return to the State; and was not the enclosed letter, from you, the first intelligence he received of the matter to which it relates?

Answer. I do not know where James Erwin was at the time the above transaction took place. I think I saw James Erwin at Winchester, during the time I was attending the county court there, in August, 1826; that is, between Monday, the 28th day of August, 1826, and the succeeding Saturday; and my impression is, but I am not certain, that I then told Erwin that I had handed the deed to Porterfield, and procured him to attend to it in my absence, but informed him that I would return by Friday evening. I infer from the letter herewith filed, marked C, and bearing date 8th September, 1826, and which purports to be addressed to me by James Erwin, that my letter was not the first intelligence he received of some of the matters to which it relates, as he then states that McConnell had written him upon the subject.

17th, by same. Did not Porterfield, on the last day for the redemption of said land, contract with Blake for the purchase of it, and afterwards pay all the money that was advanced towards the redemption, except the amount assumed by Dickson?

Answer. I do not know when Porterfield contracted for this land, of my own knowledge, nor did I ever hear, understand, or believe, that Porterfield, on the last day for the redemption of said land, or at any time before, nor until several days afterwards, come to any agreement, contract, or understanding with Blake, or with any other person, for the purchase of said land; nor do I know, or ever hear, nor do I believe, that Porterfield ever became bound, or agreed, to advance one cent towards the redemption of said land.

Question 18th. What was your reason for adopting the precaution before you left home for Winchester, of requesting inquiry to be made, repeatedly, on each successive day during the remainder of time allowed for redemption, to see if the money had been paid?

Answer. My answer to this interrogatory is contained in my answer to complainant's 4th interrogatory.

Question 19th. On the last day allowed for the redemption of said land, had J. P. McConnell any interest or control over the judgment against Garner and Blake?

Answer. I do not know whether McConnell had or had not any interest or control over the judgment, at the time mentioned in this interrogatory. I have no remembrance that McConnell gave me any instructions or directions of any kind, after I received the directions, hereupon mentioned, from Erwin.

Question 20th. Did Blake ever become a party to said suit until he became security in the appeal, or writ of error?

Answer. I do not know whether Blake became a party to this suit, whether by becoming security upon the writ of error at law, or upon the filing of the bill of injunction. I have examined the note upon which the suit was founded, and Blake's name does not appear upon it.

21. Had you been at home on the last day of redemption, would you

have recognized the authority, or agency, of McConnell in the business, at all?

Answer. If McConnell had told me that he was interested in the claim, as I then did, and now do, consider McConnell a man upon whose word I could rely, I would have believed him, and think that I would have permitted his interference, so far as his interest extended, particularly, as he was the only man that ever employed me during the pendency of the suit. Any other interference, on his part, it is probable I should have considered, and, probably, treated as the officious interposition of any other unauthorized person. This, however, is only my opinion now of what I would then have done, as I cannot pretend to say, certainly, what I would or would not have then done.

22. Has either Garner or Blake, or any person for them, ever tendered the remaining two hundred dollars?

Answer. The said two hundred dollars has never been tendered to me by any person. Immediately, or very soon after, I received letter, marked D, I showed it to McConnell, to prevent him from receiving the money from Dickson, and until Dickson and Garner, and perhaps Blake, that Erwin had joined on me, by letter, not to receive the money. And further, this defendant saith not.

JAMES FULTON.

Sworn to and subscribed before me,

Test: STEPHEN ALEXANDER,
Justice of the Peace for Lincoln county.

Received of James Fulton nine hundred and twenty-eight dollars in specie, three hundred and seventy-four dollars sixty two and one-half cents in Tennessee bank notes, at 2 per cent. discount, and also ten dollars in Via. money, amounting in all, thirteen hundred and five dollars and 17 cents, on account of a judgment James Erwin heretofore obtained against B. M. Garner, Hugh M. Blake, and others, in the circuit court of Lincoln county; by virtue of which the said Erwin, heretofore being creditor of said Blake, redeemed his land, which was bought by one James Brittain when it was sold by virtue of an execution in favor of the representatives of Joseph Brittain.

WILLIAM TALBERT,
September 9, 1826. *Agent for J. Erwin.*

(B.—marked.)

BEDFORD, *September 6th*, 1826.

Mr. FULTON:

SIR: I have requested Mr. Talbert, who lives with me, to call on you, and learn what has been done in the business with Blake, Garner & Co. If they have redeemed in specie, I should be pleased that you would send it by Mr. Talbert, if he can bring it; at all events, you will please write me by Mr. T. on his return. Although Maj. McConnell is interested in this business, the whole amount that will be received will be coming to me, as I hold his note for an amount greater than his claim in this judgment; all of which will be arranged between the Major and myself.

Very respectfully,

[Marked B.] J. ERWIN.

Mr. FULTON, *Attorney at law,*
[Mr. TALBERT.] *Fayetteville, Ten.*

(Exhibit, marked C.) 117.

PLEASANT RETREAT, *Sept. 8th*, 1826.

Mr. FULTON:

SIR: I wrote you by Mr. Talbert; since then I have received a letter from Maj. McConnell, saying that Blake and Garner had paid you, on Saturday, $800; that the sheriff had assumed $300, and Dickson the balance. This, of course, is no compliance with the law, and I am induced to think, they cannot now have even a probable right to claim the land, as the deed is now in my name. They cannot claim any indulgence granted by any one except myself, or you, as my attorney; no one else having authority to grant any. Whatever you may authorized others to do in your absence, in accordance with my instructions or yours, of course, will be adhered to by me, but nothing more. The object of this letter, and my now sending to you, is, expressly to direct, that if a forfeiture has been made by the parties, of their right to redeem, that you do not relinquish a single advantage now held, by receiving any of the money; and as it was my express order that the whole amount must be paid, and that too in specie by the day, I presume no other course has been recognized by you as legal, that may have taken place in your absence, at least, until your are further advised of my views, when I hear from you the true situation of the matters.

My object is not to harrass Blake, but to make that old sinner, Garner, understand that he has mistaken his compr.. I wish you to have a *ca. sa.* issued in the other case vs. Garner, in which you are my attorney, and have it served when I shall find it most likely to answer a good purpose, of which I will advise you in due time. Should you have made a full and final settlement with Blake before you receive this, and he has paid over all the money, send it to me by Mr. Talbert. Write me fully by the boy.

Yours, respectfully,

[C] JAMES ERWIN.

Mr. FULTON, *Attorney at Law,*
Fayetteville, Tennessee.

(Marked D.)

SHELBYVILLE, *Sept. 12th*, 1826.

Mr. J. FULTON:

SIR: I received your favor by the boy. I have also seen Mr. Talbert since his return, who informs me that he has $1305 in part of my claim vs. Garner. I have declined receiving this money from Mr. Talbert, for reasons which I will explain to you when I have the pleasure to see you. My course, I am sure, on explanation, will be satisfactory to you, Maj. Porterfield, and to McConnell. To the latter I wish you to say, that the settlement between him and me will be made, when I see him, to meet his views, or the full amount he can properly claim; but that I do not wish him to have any thing to do in receiving the balance yet due, from Dickson or Garner, for reasons I will give to him. The judgment is in my name, and I alone can control it. I am fully aware of the hold I now maintain over Garner, or rather, over Blake's land, and I am determined to use it towards the security of my other claims. I have, therefore, to request that you will have, without delay, both the deeds from the sheriffs to Brittain, and from Brit-

tain to me, recorded, and receive no sum of the money yet to come, from Dickson, or any one else, until further orders from me. I wish you to notify them, also, that I have refused to receive even the money received from you by Talbert.

When I have the pleasure to see you, you will better understand my course; until then, I have only to beg a rigid adherence to my directions in regard to my interest, now at stake.

Yours, respectfully,

J. ERWIN.

JAMES FULTON, *Attorney at Law,*
Fayetteville, Tennessee.

(Marked E.)

FAYETTEVILLE, *Sept. 9th*, 1826.

Mr. JAMES ERWIN:

SIR: I received yours, of the 6th instant, by Mr. Talbert, also yours, of yesterday, by the boy. I was unexpectedly detained at Winchester until Saturday evening, and did not get home until Sunday. Before I left this place for Winchester, I deposited your deed with Major Porterfield, and requested him to attend to the business, and receive the money, in the event I should not return. My object in doing this was, that, I was fearful that Garner would take advantage of my absence and give receipts, and, at least, pretend that he had, as clerk, received the money under the provisions of the act of 1824; and, really, while at Winchester, I had great anxiety upon this subject, believing that Porterfield could not be recognized as an agent, forasmuch as he was not appointed by you. I informed Porterfield that it was a specie debt, and directed him to call at the circuit court clerk's office, where the amount of your claim could be ascertained. I also directed him to calculate interest, at the rate of 10 per cent. per annum, upon the whole amount of your claim, from the time at which you redeemed the land. These were all the directions I gave Porterfield; and, indeed, at that time, I confidently expected to be at home before Saturday. On my return, on Sunday, I learned from Porterfield that the company paid, on Saturday, $1043; that the sheriff assumed the payment of $300, and that Maj McConnell gave time to Dickson, until the 15th instant, for the residue, saying that he had an interest in the judgment to that extent, at the very least. This done, Porterfield without other directions, instruction, or authority, than that above stated, pledged himself on my behalf, that no advantage should be taken by me on account of the whole of the money not having been paid on that day. I had no expectation that this course would have been pursued, and had I been here nothing but the money itself would have answered the purpose; and, in making this requirement, I should have acted in obedience to your instructions, and in strict accordance with my own feelings. Could I have conceived that the course pursued operated injuriously to your interest, I would, unhesitatingly, have disavowed the acts of Maj. Porterfield: but he having placed himself, although unauthorized, in a delicate situation in his efforts to do me some service in this matter, I feel willing to extricate him from that difficulty, provided I could do so without injury to you. It was under these circumstances, and for these considera-

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tions, that I consented to vary from the strict letter of your instructions, and adopt the acts of Major Porterfield. The acts stand thus:

There was bid by Brittain, Sept. 3d, 1824 - - -	$ 162 00
That amount, and 10 per cent. thereon, paid by you, say November 3, 1825 - - - - - -	20 00
Judgment in your favor in the circuit court here, September 23, 1823, for - - - - - - -	1,074 93
Judgment on the last sum, at 6 per cent., until the time you redeemed, say November 23d, 1826, 26 months - -	139 62
	1,396 55
Judgment on $1396 55, from 23d Nov. 1825, until the 3d of September, 1826, at the rate of ten per cent. per annum -	108 62
In all $1,505 17 - - - -	1,505 17
Paid into my hands all except $200, that is - - -	1,305 17
Balance	$ 200 00

Maj. McConnell took it upon himself to indulge Dickson for this amount, saying that he had an interest in the judgment, as I understood. This I would not have submitted to if I had been here. I have showed McConnell your letters, and he still claims this interest. As Dickson is at Nashville, I proposed to him, McConnell, that I would advance the money and send it to you, and look to Dickson myself; to this he does not agree; and, indeed, I should consider this an unauthorized, officious interference on the part of Maj. McConnell, but for the circumstances of his having employed me heretofore to attend to this suit at law in the circuit court, and again in chancery, all the while saying he had an interest in it; and his general superintendence of this matter heretofore for himself, or as your agent. These are the circumstances, and I will move according to your directions about the matter. I am responsible to you for the payment of the residue of this money at any moment; and I wish you would say to me, by the first conveyance, what you will have done about this matter. I have prevailed upon McConnell to write you by the boy. I will write to Columbia, by the very first conveyance, for a *ca sa.* against Garner. Boyles is in the matter—must I not proceed against him too? You have not now to learn that Garner will swear, or do any thing; and there is no doubt he will take the benefit of the law for the relief of insolvent debtors. Should this course fail, give me full power, if you choose, to levy on property, file bills, &c. and you will most assuredly get your money. There is a valuable cotton gin and carding factory in the vicinity of this place, and Garner has the sole control, and receives all the profits arising from them; and I verily think they are not encumbered. Boyles has property which I know can be got at by a bill, if in no other way; and I am very confident the money can be made. As to this old veteran in villany, Garner, you certainly do know that he is unworthy your resentment; and, indeed, of your notice, further than to get all your money out of him if you can; and I do think that can be done in the way I propose. I think he has no other real property about the place. I have

sued him in ejectment for his house, and all the other property he has here, and will succeed easily. I will send the money in my hands by Mr. Talbert.

I should be glad to hear from you so on upon some of these matters.

Yours, respectfully,

JAMES FULTON.

Andrew A. Kincannon, being first duly sworn, deposeth and saith:

Question 1st, by complainant's counsel. Are you acquainted with the parties to this suit?

Answer. I am well acquainted with Blake, the complainant, and have a slight acquaintance with the defendant.

Question 2d, by same. Have you at any, and at what, time heard James Erwin, the defendant, give to James Fulton, esquire, any instructions relative to the reception of money for the redemption of the land of Hugh M. Blake? If so, state at what time and place, and what Erwin did, at that time, say to Fulton on this subject; the exten of the authority he then gave Fulton in the management of said business, and all the conversation you then heard on the subject.

Answer. At some short period previous to the time at which I understood the money was paid, or was to be paid, I was called on by Mr. Erwin, in the town of Fayetteville, having accidentally fallen into company with himself, James Fulton, and Brice M. Garner, to bear witness that, in relation to the money which was to be paid to him, he had authorized Mr. Fulton to receive the same for him. The entire amount of the conversation I cannot now recollect, there having been a great deal said by both Mr. Erwin and Mr. Garner in no wise relating to the subject. I recollect that Mr. Erwin stated to Fulton that he must make them *lug the specie*, not that he cared particularly to have that kind of money, but because he, Garner, had displeased him in the course of the transaction.

Qestion 2d, by same. State, if you please, whether you were present at a conversation held between Erwin, Garner, and Fulton, at the market-house, in the town of Fayetteville; and whether, at that time, Erwin did or not call upon you, and others, to witness that Col. Fulton was his agent to transact his business relative to the redemption of Blake's land, and whether he did not then say that Mr. Fulton was fully authorized to take any step he might deem prudent, and that he would be bound and abide by all acts done by him, as his agent, in relation to said land, and the collection of his claim upon Garner and Blake?

Answer. The conversation alluded to in my answer to the first interrogatory, took place in the market house, in Fayetteville. At that conversation there were no other persons present, as I now recollect, but Erwin, Fulton, Garner, and myself. Mr. Erwin, as before stated, did call on me to bear witness that Mr. Fulton was *fully authorized* to transact *the whole* business for him. From all that was said by Mr. Erwin, I did believe that any course taken by Mr. Fulton would be sanctioned by him, and that he would be bound to all intents and purposes by his acts.

Question 3d, by same. Are you acquainted with the situation and quality of the land before mentioned? If yea, what is the value of said land per acre?

Answer. I have frequently been on the land, and am as well acquainted with it as any other land, at the same distance from town, which I never examined particularly; and, from the limited knowledge I have in lands, I should believe the land to be worth from eight to ten dollars per acre?

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Cross examined by Col. Andrew Erwin, for Defendant.

Question 1st. Are you acquainted with the hand writing of Hugh M. Blake? If yea, in this letter, marked F, dated the 31st December, 1826, in the proper hand writing of said Blake?

Answer. I believe I am well enough acquainted with the hand writing of Hugh M. Blake to distinguish his signature from that written by any other person. I do believe the letter, referred to in the interrogatory, to be the hand writing of Blake.

Question 2d, by same. Did not James Erwin expressly direct Col. Fulton, in the conversation alluded to at the market house, to insist on every dollar of his demand against Garner and Blake being paid in specie? Did he not say they should *lug* the specie for the abuse Mr. Garner had then given him?

Answer. I do not now recollect the precise language used by Mr. Erwin in relation to that particular; but I do recollect that he told Mr. Fulton to make them *lug the specie;* and from the impression I now have, and always have had since, and at the time, his remarks in relation to *lugging the specie,* grew out of the altercation which then and there took place between him and Mr. Garner.

Re-explained by Complainant's counsel.

Question 1st. I wish you to state whether, during the conversation above mentioned, Erwin did not say, both before and after the subject of *specie* was mentioned, that Mr. Fulton was authorized to transact the whole of his business relative to his demand against Garner and Blake, and that he would ratify all his *acts done* in said business?

Answer. I did, as before stated, believe, from all that was said both before and after the conversation relative to the specie, believe that Mr. Fulton was fully authorized to receive the money, and to do, *in relation to the whole business,* any thing which might seem to him expedient.

Re-examined by Col A. Erwin, for Defendant.

Question 1st. Did you not then believe, and yet believe, that Mr. Garner made a very unnecessary and unwarrantable attack on James Erwin, at the time alluded to?

Answer. As to the attack being unwarranted, I am not able to say, not having any knowledge of the conduct by the parties towards each other previously; but I was then, and am still, of the opinion that the course pursued by Mr. Garner towards Mr. Erwin, upon the occasion alluded to, was altogether unnecessary, and but illy calculated to settle business.

And further, this deponent saith not.

A. A. KINCANNON.

Sworn to and subscribed before me, at the time and place mentioned in the caption. And the further taking of depositions in this cause is adjourned until Monday next, this 31st May, 1828.

S. ALEXANDER,

Justice of the Peace for Lincoln county.

(Exhibit, marked F.)

FAYETTEVILLE, 31*st December*, 1826.

MR. JAMES ERWIN:

DEAR SIR: I saw your letter to Robert Dickson, and am very anxious to get clear of difficulty and litigation; and has, as it is, rather than being law an hour further.

I will give my paper with Robert Dickson, and others if required, for amount of Boyles and Garner's debt, due you, at one and two years, on your deducting the draft, McLaughlin, Erwin & Co., in favor of R. & M. Dickson, for $311. As I understood you promised Garner you would settle that debt if he would secure his to you; and I wish you to come immediately to my house and make the arrangement. Should there be one or two hundred dollars of the other debt unpaid, that shall be paid, or will be secured at ninety days.

I am yours, respectfully,

H. M. BLAKE.

Mr. JAMES ERWIN, *Bedford county*. [Per Boy.]

Your boy has been detained by Mr. Robert Dickson and myself, and Blake.

Monday Morning, 2d June, 1828.

The taking of depositions, in the cause mentioned in the caption, was again commenced, according to adjournment, on Saturday last: When A. A. Kincannon, whose deposition was taken in this cause on Saturday last, was again called by complainant, and further interrogated, as follows:

Question 1st, by complainant. You have given your opinion as to the extent of the authority given to Fulton by Erwin, and that your opinion was, that Fulton was fully authorized to transact said business as he thought proper—you will please to state, Col. Kincannon, what was the foundation of that opinion, and, as near as you can recollect, state the words, or the substance of the words, used by Erwin to Col. Fulton, or in his presence, communicating authority to Fulton on this subject; and whether Erwin did or not say he would abide by what Fulton should do or ratify, sanction or agree to, or similar language, conveying that idea to your mind?

Answer. At this distant period from the time at which the conversation alluded to took place, I am unable to state what were the whole of the expressions used by Mr. Erwin upon that occasion; but, as before stated on Saturday evening, it was my *understanding*, and I thought from all that was said by Mr. Erwin, that it was so understood *by himself and all others* present, that Mr. Fulton was fully authorized to act for Mr. Erwin in relation to the whole matter. Mr. Erwin did say that he would ratify or sanction Mr. Fulton's acts, or words to that import.

Cross-examined by A. Erwin, for Defendant.

Question 1st. Did you not also understand at what time that Fulton was expressly directed by Mr. Erwin to insist on every dollar being paid in specie—did he not so direct him in your presence?

Answer. I did understand Mr. Erwin to direct Mr. Fulton to demand the specie, and I believe I heard him so direct him. I know I heard him say he must make them *lug* the specie; meaning, as I then supposed, from Nashville.

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Question 2d. Did Mr. James Erwin give Mr. Fulton any authority to appoint a substitute, or to take bank notes, in your hearing?

Answer. He did not, as I now recollect.

Cross-examined by Complainant.

Notwithstanding the directions of Erwin to Fulton to exact the specie, from all that took place in the conversation, was it not clearly your understanding that any act done by Fulton, in the management of Erwin's business, would be approbated by him?

Answer. It was my understanding and belief that, notwithstanding Mr. Erwin did direct Mr. Fulton to demand the specie, he would nevertheless acknowledge his acts.

Cross-examined by Erwin, for Defendant.

Did you ever believe an agent could legally do an act where no authority was delegated to him, or that expressly delegating some power would authorize the agent to depart from his express instructions and do others?

Answer. I do not believe there can be an agent without some authority, nor do I believe an agent would be authorized to depart from express instructions, and do things which he is not authorized to do.

And further, this deponent saith not.

A. A. KINCANNON.

Sworn to and subscribed before me, this 2d June, 1828.

STEPHEN ALEXANDER,
Justice of the Peace.

Robert Dickson, being first duly sworn, deposeth and saith:

Question 1st, by complainant. Are you acquainted with the parties to this suit?

Answer. I am.

Question 2d, by same. Are you acquainted with the hand writing of the defendant, James Erwin?

Answer. I am; I have seen him write frequently.

Question 3d, by same. Are the letters now presented to you, dated the 6th, 8th, and 12th September, 1826, marked B, C, and D, and purporting to be written by said Erwin to James Fulton, esq. in the proper hand writing of said Erwin?

Answer. I have no doubt that the above letters, dated 6th, 8th, and 12th September, 1826, addressed to Mr. Fulton, and James Fulton, esq. are in the proper hand writing of James Erwin, marked B, C. and D.

Question 4th. Are you acquainted with the hand writing of James Fulton? If so, is the receipt now before you, marked G, dated September 7th, 1826, in the hand writing of Mr Fulton?

Answer. The receipt now before me, marked G, is in the proper hand writing of James Fulton, dated September 7th, 1826.

5th, by same. State, if you know, at what time Major Francis Porterfield purchased the land of Hugh M. Blake, and whether it was or not after the time for the redemption of said land had expired, and how long after; and further state, if you know, what is the value of said land; and do you whether Porterfield advanced any of the money for the redemption of said land?

Answer. I can't state precisely to a day when Francis Porterfield purchased the land of Hugh M. Blake; but, this I do know, it was several weeks after the redemption money was paid, and I believe that said land to be worth from nine to ten dollars per acre, in cash; and I am certain that Francis Porterfield did not advance one cent of the money for the redemption of said land.

Cross-examined by Col. Erwin, for Defendant.

Question 1st. Are you acquainted with the hand writing of Hugh M. Blake? If yea, is the letter now before you, marked F, bearing date the 31st December, 1826, and about to be enclosed in this deposition, the proper hand writing of said Blake?

Answer. The letter now before me, marked F, bearing date 31st Dec'r. 1826, is in the proper hand writing of H. M. Blake, as I have often seen him write.

2d, by same. Were you present in Fayetteville on the day when, at the time limited for the redemption of H. M. Blake's land, which had been sold to Brittain and conveyed to Erwin expired, and when there was an attempt made to redeem the same?

Answer. I was present in the town of Fayetteville on the day that above spoken of; and I understood the day the money was paid to Francis Porterfield was the last day *the* could redeem the land; and also understood that, if the money was not paid that day, that James Erwin would claim said land.

3d, by same. Did you, on that occasion, assume the payment of three hundred dollars towards the redemption of said land?

Answer. I did assume to pay John P. McConnell, on that day, between two and three hundred dollars, in being the balance of said judgment against said H. M. Blake, as J. P. McConnell informed me he was interested in said judgment against Blake, Garner, and others.

4th, by same. To whom did you make the assumpsit, and was it in writing?

Answer. I assumed it, verbally, to John P. McConnell, in the presence of William Husbands, sheriff, and others, not now recollected.

5th, by same. To whom did you pay the $300, and when, and in what kind of currency?

Answer. I can't, at this time, recollect if I ever paid the money.

6th, by same. Did Hugh M. Blake give security to Porterfield for the title to the above land? If yea, who was Blake's security?

Answer. Hugh M. Blake gave Porterfield John W. Blake and myself as security, but dont know whether he gave any others or not; but, my impression is, he did not give any others as security.

7th, by same. How come you to advance money to pay Blake's debt? Has that money ever been refunded to you, and by whom; and to whom did you look to for the refunding of it at the time when you made the assumpsit?

Answer. I did not advance any money for Blake and Garner: I did assume the sum, that I before have spoken of, to John P. McConnell, but I never have *I paid*, being notified by Mr. James Fulton agent for Jas. Erwin.

8th, by same. Do you recollect how much of the money, paid at that day, was paid in specie, and how much in bank notes?

Answer. I can't, at this time, precisely recollect what amount of the money was paid in specie and bank notes, but I recollect that there was more money paid in specie than in bank notes.

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9th, by same. Was the redemption money actually paid on that day or a subsequent day, which was then agreed on for the accommodation of the purchaser or purchasers? Please to state, specifically, the nature of the arrangement then made for the payment of said money, and how it was carried into effect?

Answer. I believe that all the money that was paid, (only) my assumpsit to John P. McConnell, was paid on the last day that the law allowed for the redemption of said land, to Francis Porterfield, as agent for Jas. Fulton, who was James Erwin's attorney.

Cross-examined by Complainant.

1st. Was not the whole of the money that was paid to Porterfield, on the day alluded to, either paid in specie, or in bank notes at such discount as rendered it equivalent to specie?

Answer. It was paid in specie, and bank notes at a discount as made the bank notes equivalent to specie.

2d. After you had assumed the payment of the 2 or $300, above spoken of, did or not Col. Fulton inform you that it would not be received by Mr. Erwin, and that you, therefore, need not tender it; and had you any other interest in the land, *answer* on payment of the money, then for the accommodation of Garner and Blake?

Answer. James Fulton told me that James Erwin would not receive the money, and that I need not tender him the amount that I had assumed to pay J. P. McConnell; and I never had any interest in said Blake's land, directly or indirectly; and all that I did in that transaction was to accommodate Blake and Garner.

And further, this deponent saith not.

R. DICKSON.

(Exhibit, marked G.)

I have heretofore received of Wm. C. Blake, by himself and by the hands of Robert Dickson, Wm. Husbands, and others, in all twelve hundred and seventy-six dollars and seventy cents, on account of a judgment heretofore rendered against B. M. Garner, H. M. Blake, and others, in the circuit court of Lincoln county, Tennessee, in favor of James Erwin; as also on account of a claim which said Erwin had against said Blake, Garner, and others; he, Erwin, having heretofore redeemed the land of said H. M. Blake from one James Brittain; the whole amount of said Erwin's claim against said land being, this day, $1501 25, besides costs. For the balance of which claim, the said Erwin agrees to look to the said Robert Dickson, he having assumed to pay it.

J. ERWIN,
By his attorney JAS. FULTON.

September 7th, 1826.

Major J. P. McConnell, being first duly sworn, deposeth and saith:

Question 1st, by complainant. Are you acquainted with the parties to this suit?

Answer. I am.

2d, by same. Did you at any, and at what, time trade with James Erwin for a note upon Brice M. Garner, and for what amount, and upon what terms

did you trade for said note; and whether or not did said Erwin transfer his interest in said note to you by endorsement? If not, what reason did he assign for not doing so?

Answer. In the winter of 1821, I think it was, that I purchased a note of Jas Erwin upon Brice M. Garner, for 7 or 8 hundred dollars, payable at the Nashville bank. I paid him two hundred or two hundred and twenty-five dollars, or some such, in horses, and executed my note to him, payable at a short time afterwards, for the balance. Erwin did not transfer the note to me by endorsement: he stated that it was not necessary to transfer the note by endorsement, as it was payable to Erwin or *bearer*.

Question 3d. Did you bring suit upon said note against Brice M. Garner? If so, in whose name was said suit instituted—who employed attorneys to prosecute said suit—what attorneys were employed, and by whom were they paid for their services?

Answer. I did bring suit against Brice M. Garner upon said note. I think the suit was brought in the name of James Erwin. I employed Wm. B. Martin to bring said suit, and attend to it. Judgment was obtained in the circuit court for Lincoln county, and was taken by Garner to the Supreme Court, at Columbia; in which appeal Hugh M. Blake became security. Wm. E. Kennedy was requested by Wm. B. Martin to attend to it in the Supreme Court. I paid all attorneys, that were employed, for their services. Among others, Col. Fulton was employed.

Question 4th. Did you and Erwin at any, and at what, time *recind* the contract which you had made in relation to the trade and purchase of said note you had executed to him, in part consideration of the transfer of Garner's note to you; and if the contract for the transfer of the interest in said note of Garner's to you was rescinded, was said transfer rescinded until after the time for the redemption of Blake's land had expired?

Answer. James Erwin sued me upon the note I gave him in part consideration of Garner's note, long before the time expired for the redemption of Blake's land, and, perhaps, before the sale of it, and obtained judgment against me. Mr. Erwin afterwards agreed to wait for the money I owed him, and for which he had obtained judgment against me, until the money could be made of Garner and Blake, and others, who were Garner's security. There was no relinquishment of the demand of Erwin against me. He was anxious that I should not be of any relinquence in the collection of the money against Garner, Blake, and others; and I considered that the demand of Erwin against me was suspended to await the event of the suit against Garner. I told Mr. Erwin that I would think it ungenerous that he should exact his money of me, when probably would not make it off of Garner and his securities, and he agreed not press his claim against me. All this was *long before the time* for the redemption of Blake's land had expired. I think this was before the sale of the land, or about that time, in 1824.

Question 5th. Did you not consider yourself as having the only property in, and complete control over, the note and judgment against Garner and Blake, and others; and did you not consider yourself as having the sole control over it until the time for redemption had actually expired; and did you not have frequent conversations with Erwin to the same effect as *the* you have just mentioned, both before and after the sale of Blake's land?

Answer. Before the land was redeemed from Brittain, I told him I would redeem it, and let him have the benefit of it in satisfaction of his claim against

me, so far as the claim would go. From the time that Jas. Erwin appointed Col. Fulton to attend to this business, I did not consider myself as having any further control over it. The same understanding continued between Mr. Erwin and myself until after the sale of Blake's land, and until after I redeemed it.

6th, by same. By whom was the costs paid in the suit of Erwin against you, and at what time did you and James Erwin have a final settlement of his claim against you?

Answer. I paid the costs of the suit, but they were afterwards refunded by James Erwin, and Erwin said that the marshal had improperly collected the money of me. Our final settlement of the claim of Erwin against me, was in October, 1826.

7th. On the day of the expiration of the time for redeeming Blake's land, did you or not receive the assumpsit of Dickson for two hundred dollars, in part redemption of said land? state, as far as you can recollect, the facts relative to this transaction.

Answer. I was asked what I thought would be due me, after settling the amount of Erwin's claim against me? I answered about two hundred dollars, and received Dickson's assumpsit for that amount; but, afterwards found it was only a little over one hundred dollars, which sum James Erwin afterwards paid me, having notified me not to receive it from Dickson.

8th. Did you not sanction the acts done by Porterfield on the day of redemption?

Answer. Porterfield told me that he was requested by Fulton to transact the business in his absence. I believed him, and acted with him as such.

Cross-examined by Erwin.

1st. Did you not give up the entire control of this matter to Jas. Erwin about the date of his appointing Fulton his agent?

Answer. I did,

2d. Did you not redeem the land expressly for the benefit of Jas. Erwin, at his request?

3d. Answer. I did.

4th. Did not James Erwin tell you he would require every cent in specie?

Answer. He did.

[To the foregoing interrogatory and answer, the complainant excepts.]

5th. Did you at any time after Fulton was appointed agent by Jas. Erwin, instruct either him or Porterfield to depart from the instructions of Erwin?

Answer. I did not.

6th. you acquainted with the hand writing of Hugh M. Blake, and is the letter, marked F, dated 31st December, 1826, in his hand writing?

Answer. I am acquainted with the hand writing of H. M. Blake, and believe the letter, alluded to, to be in his hand writing.

Cross-examined by Complainant.

Are you acquainted with the hand writing of James Fulton? If so, is the receipt now before you, marked G, dated 7th September, 1826, in his hand writing?

Answer. I am acquainted with the hand writing of James Fulton, and believe the receipt, alluded to, to be in his proper hand writing.

2d. What is the value of the tract of land of H. M. Blake, which was sold, and redeemed by you from Brittain?

Answer. I should suppose it to be worth from ten to twelve dollars per acre.

And further, this deponent saith not.

J. P. McCONNELL.

Sworn to, and subscribed to before me, this 2d June, 1828.

STEPHEN ALEXANDER,
Justice of the Peace for Lincoln county.

STATE OF TENNESSEE, *Lincoln County.*

I, Stephen Alexander, an acting justice of the peace for the county of Lincoln, and State of Tennessee, do hereby certify that the foregoing depositions were taken at the time and place mentioned in the captions, and that the same are in the proper hand writing of the witnesses, respectively, or by Wm. P. Martin, by consent of parties. Given under my hand and seal, this 2d June, 1828.

STEPHEN ALEXANDER,
Justice of the Peace for the county of Lincoln.

This indenture, made and entered into this 21st day of August, in the year of our Lord 1826, by and between James Brittain of the town of Shelbyville, Bedford county, and State of Tennessee, of the one part, and James Erwin, of the same county and State, of the other part, *witnesseth:* That, whereas, on the 3d day of September, 1824, the said James Brittain became the purchaser, at sheriff sale, of the tract of land and premises hereinafter described as the property of Hugh M. Blake, situate, lying and being in said county of Lincoln, on Cane creek, and bounded on the south by Joel Cummins, on the north by the lands of Robert Wilson, on the west by the lands of ; the quantity of acres not known, but supposed to contain 300 acres, the same place where said Blake now lives; which said tract of land was sold by virtue of a writ of *fieri facias*, issued from the clerk's office of the chancery court of the 6th judicial circuit, holden at Columbia, in the State of Tennessee, at the instance of James Brittain, executor of Joseph Brittain, dec'd, and was subject to be redeemed within two years from the date and day of sale, under the rules and restrictions prescribed by an act of the General Assembly, in that case made and provided; and, whereas, the said tract of land was sold to the said James Brittain for the sum of one hundred and sixty-two dollars, and, whereas, the said Jas. Erwin, in the month of November, 1825, was, and yet is, a bona fide creditor of the said Hugh M. Blake in the sum of about twelve hundred dollars, and now, as appears by a judgment rendered, and entered of record in the circuit court of the county of Lincoln, and State of Tennessee; which judgment was rendered in the month of September, 1823; and whereas the said James Erwin did heretofore, to wit, in the month of November, in the year 1825, by his agent, John P. McConnell, tender and pay over to the said James Brittain the aforesaid sum of one hundred and sixty-two dollars, being the amount bid and paid by the said Brittain for the said land; also the further sum of twenty dollars, that being ten per centum per annum interest accruing on the said sum of one hundred and sixty-two dollars; and, at the same time, did offer and agree to credit the said Hugh M. Blake with the further sum of one thousand dollars upon the aforesaid judgment. Now, therefore, this indenture further witnesseth, that the aforesaid James Brittain, in consideration of all

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said premises and said sums of money, amounting to one hundred and sixty-two dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, and, by these presents, doth give, grant bargain, and sell, unto the said James Erwin, the aforesaid tract of land, together with all the houses and buildings thereon, with the appurtenances; to have and to hold the said tract of land, and buildings, with the appurtenances, to the only proper use and behoof of said James Erwin, his heirs and assigns forever, in as ample and full manner as the said Brittain is authorized by virtue of the sale, purchase, and redemption, aforesaid. In testimony whereof, the said James Brittain hath hereunto set his hand, and affixed his seal, the day and year first above written.

JAMES BRITTAIN, [SEAL.]
Executor of Joseph Brittain, dec'd.

Attest:
JOHN EAKIN, Jurat,
A. MARTIN, Jurat.

State of Tennessee, Bedford County Court. February Term, 1827.

I, James McKissick, clerk of the court of *court of* pleas and quarter sessions of the county of Bedford, in the state aforesaid, do hereby certify that the execution of the within deed, from James Brittain, as executor of the last will and testament of Joseph Brittain, dec'd. to James Erwin, was proven in open court by the oaths of John Eakin and Abram Martin, subscribing witnesses thereto, and ordered to be so certified for registration. In witness whereof, I have hereunto set my hand, and affixed the seal of the court, at office, in Shelbyville, this 16th day of February, 1827.

JAS. McKISSICK.

State of Tennessee, Lincoln County, Register's Office, 22d Feb'y, 1827.

I hereby certify, that this deed, and certificate of clerk thereon, is duly registered in this office, in book G, and pages 496 & 497.

ROBT. H. McEWEN, *Register for L. C.*

To all to whom these presents may come—Greeting:

Whereas, there did issue a writ of *fieri facias* from the honorable the court of chancery for the 6th judicial circuit, held at Columbia, on the 1st Monday in March, 1824, in favor of Jas. Brittain, executor of Joseph Brittain, dec'd. against Brice M. Garner, John Wilson, John Porter, Philip Koonce, and Hugh M. Blake, for the sum of three thousand nine hundred and eighty-seven dollars and 16 cents debt, together with the further sum of thirty-eight dollars and 64 cents costs, endorsed on said fi. fa.; which said writ issued to the sheriff of Lincoln county, and came into his hands on the 10th of May, 1824, and was, on the 26th of July, 1824, by said sheriff of Lincoln county, levied on the following tract of land, as the property of Hugh M. Blake, one of said defendants, lying on Cane creek, and bounded on the south by Joel Cummins, and north by the lands of John Wilson, west by the lands of , the quantity of acres not known, but supposed to contain upwards of three hundred acres, the same place where said Blake now lives. And whereas said sheriff did advertise, and give notice to said Blake, as is required by law, that said tract of land, above mentioned, would be offered for sale on the 3d of September, 1824, to satisfy said execution,

at the court-house door, in the town of Fayetteville, in said county; and whereas said sheriff did, on the 3d of September, 1824, agreeable to said advertisement and notice, proceed to sell said tract of land to the highest bidder; and did, then and there, publicly cry the same; at which sale James Brittain became a bidder, and did, then and there, bid the sum of one hundred and sixty-two dollars for said tract of land, which was the highest and best bid made by any person for said land, whereby the said James Brittain became the purchaser thereof. Now, therefore, this indenture made and concluded this 3d of September, 1824, between Wm. Husbands, high sheriff of Lincoln county, and State of Tennessee, of the one part, and Jame Brittain, of the other part, witnesseth: That the said W. Husbands, sheriff as aforesaid, for and in consideration of the sum of one hundred and sixty-two dollars, to me in hand paid by the *James Brittain*, the receipt is hereby acknowledged; and by virtue of the power and authority in me vested, as sheriff aforesaid, do hereby bargain, sell, alien, convey, and confirm unto the said James Brittain the said tract of land; and do, by these presents, sell and convey to the said Brittain, and his legal representatives, all such right, as by the act or acts of the General Assembly, as I, as sheriff, am bound to do, and no further. As witness whereof, I, as sheriff, have hereunto set my hand and seal, the day and date before written.

WM. HUSBANDS, *Shff. for L. C.* [SEAL.]

F. PORTERFIELD,
DAVISSON MCMILLEN.

State of Tennessee, Lincoln County Court. January Term, 1827.

The due execution of the within deed, from W. Husbands to Jas. Brittain, was proven in open court by the oaths of Francis Porterfield and Davidson McMillan, the subscribing witnesses thereto, and ordered to be so certified. Given under my hand, this 20th day of January, 1827.

BRICE M. GARNER, *Clerk.*

State of Tennessee, Lincoln County, Register's Office, 22d February, 1827.

I hereby certify that this deed, *deed,* and certificate thereon, is duly registered in this office in book G, and page 495.

R. H. McEWEN,
Register for L. county.

The following decree was entered in said cause, to wit:

Be it remembered, that on the 23d day of June, 1829, the above cause came on to be heard, before the hon. John McLean, judge, on the bill, answer, replication, exhibits, and proofs, in the cause.

The complainant set forth in the bill, that was a citizen of the State of Tennessee, and that, on the 3d day of September, 1824, he was seised, and possessed, in his own right, of a tract of land situate in Lincoln county, in said State, containing about three hundred and fifty acres, bounded on the south by the land of Robert Case, on the north by that of Robert Wilson, on the east by the land of Joel Cummins, and the west by the land of John Marr and John W. Blake; that on the said 3d day of September, 1824, the

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same was sold by the proper officer, under an execution founded on a decree of the chancery court, held at Columbia, rendered in favor James Brittain, executor of the last will, &c. of Joseph Brittain, dec'd. against complainant, and others; that said James Brittain became the purchaser of said tract of land at said sale, for the price of one hundred and sixty-two dollars, and received the sheriff's deed therefor; that James Erwin, a citizen of the State of Louisiana, in the month of September, 1823, obtained a judgment against complainant, and others, securities of one Brice M. Garner, for the sum upwards of twelve hundred dollars; that, on the 21st August, 1826, one John P. McConnell, having acquired an interest in said last mentioned judgment, in pursuance of an arrangement with said James Erwin, and for the benefit of himself and said Erwin, redeemed said tract of land from said James Brittain, by advancing the purchase money paid for the same, by said Brittain, together with ten per cent. interest thereon, and offered to credit said judgment of said Erwin, against complainant, the sum of one thousand dollars, under the provisions of an act of Assembly of the State of Tennessee, passed in the year 1820; and, therefor, said James Brittain conveyed said tract of land to said Erwin. Said bill further set forth, that the complainant, with a view to avail himself of the privilege of redeeming said tract of land from said Erwin, did, before the expiration of the term of two years from the date of said sheriff sale, paid to James Fulton, the attorney and agent of said Erwin, twelve hundred and seventy-six dollars and seventy cents, including the amount advanced by said Erwin and McConnell to said Brittain; and also, $1094 70 of the said judgment of said Erwin against complainant, leaving a balance due on said judgment of two hundred and twenty-three dollars and fifty-five cents, which one Robert Dickson assumed to pay to said McConnell, who was interested in said judgment of said Erwin to the amount, as complainant was informed and believed, and said McConnell accepted said assumpsit in satisfaction of so much of said judgment. Said bill further charges, that said James Fulton was fully authorized to receive said money by said Erwin, on the application of complainant to redeem said land, and that McConnell was authorized, and had a right, to relieve complainant from the payment of so much of said judgment as said Dickson assumed to pay; that, nevertheless he, said Erwin, had refused to reconvey said tract of land to complainant, although he had received said sum of money, paid to the said James Fulton, his agent, as said agent had informed complainant; but had commenced an action of ejectment in this honorable court to recover possession of the same. The bill prayed that complainant might be permitted to redeem said land, and that the legal title to the same might, by decree of the court, be divested out of the said James Erwin, and be vested in the complainant, and his heirs, and for personal relief.

The defendant admitted, in his answer, the purchase of the tract of land by Brittain under execution, the day and year set forth in the bill, and for the price therein specified; that he had recovered a judgment against complainant, as set forth in the bill, and that McConnell had redeemed the land from Jas. Brittain, as alleged by complainant, for his, the defendant's benefit, and that Brittain had conveyed the land to him. The defendant denied that McConnell had any interest in the judgment in the name of the defendant against complainant; but admitted that he had sold the note, upon which said payment was founded, to McConnell; that he had received about two hundred dollars in part payment for the same, and

that he had taken McConnell's note for the balance, upon which he had brought suit and obtained a judgment, before September 1826, but alleged that it was understood between him and McConnell, before that time, that he, defendant, should have the benefit of the judgment against Garner and complainants, and when paid was to be in discharge of the judgment which defendant had obtained against McConnell. The defendant denied that Jas. Fulton, or any other person for him, was authorized to receive any thing else than specie, or to make any arrangement in regard to the payment of the amount, necessary to be paid by complainant within two years from the date of the sale of said land, than were implied in his instructions to the said Fulton, which he alleges were, that the whole sum should be paid in specie. Defendant denied that he had received any money from said Blake, or any one else, in payment of his claim against said complainant, and insisted that the provisions of the act of Assembly had not been complied with in such manner as to entitle complainant to redeem.

It appeared from the proofs in the cause, that, some short time before the 3d of September, 1826, when it appeared the term had expired within which the complainant had a right to redeem the said tract of land, the defendant Erwin was in the *county of Lincoln*, where all the persons concerned, except himself, resided; and in the presence of Garner, the principal in the judgment recovered by Erwin against complainant, and who was also clerk of the county court of said county, directed James Fulton, esq. who had been the attorney employed in prosecuting the suit, in which judgment had been obtained against complainant, to receive the money which might be tendered by complainant for the purpose of redeeming said tract of land, and if he thought it a case which he was entitled to specie, to require the payment to be made in specie. It further appeared, that Fulton, having business in another county, appointed one Francis Porterfield to attend to the business for him in his absence, and instructed him to receive from complainant nothing but specie, or bank notes at such a discount as would make them equivalent to specie. It also appeared that Brice M. Garner was insolvent and unprincipled; that a principal object of said Erwin in requesting Fulton to receive the money from complainant, was to prevent a fraudulent acknowledgment of payment of the redemption money by Garner, who, as clerk of the county court, had a right to receive it in the absence of the creditor. For this reason, Fulton appeared to have been particular in his instructions to Porterfield, to prevent the payment of the money into the hands of Garner, and to see that he did not practice any fraud upon Erwin, county court. It further appeared that, on the 2d day of September, 1826, the complainant paid into the hands of Porterfield, under the instructions of Fulton, the sum nine hundred dollars, the principal part thereof in specie, and the balance in bank notes, as made them equivalent to specie; that said Porterfield agreed to accept the promise, or assumpsit, of Wm. Husbands, the sheriff of the county, for the payment of three hundred dollars, in satisfaction of so much, and that J. P. McConnell agreed that he would look to one Rt. Dickson for the two hundred dollars, the amount to which he alleged he was entitled out of the judgment against complainant. Porterfied, at the same time, pledged himself that Fulton, the lawyer and agent of Erwin, would sanction the arrangement, and that the complainant should sustain no injury in consequence of it. It appeared that Fulton, the agent, did sanction what had been done by Porterfield in his absence, and, on the 7th day of September, 1826, gave com-

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plainant a receipt, in the name of said Erwin, for the sum of $1276 and 76 cents, and at the same time recognized the right of said McConnell to control so much of said judgment as he claimed an interest in. It further appeared to the court, by the testimony of the witness present, that when Erwin requested Fulton to attend to the receipt of the redemption money, he had given him full authority to act for him, and that whatever he might do would be acquiesced in. It also appeared that Erwin, by his letter of the 8th of September, 1826, to Fulton, written after he had been informed, by a letter from McConnell, of many of the most material particulars of the arrangement of the 2d of September, admitted the authority of Fulton to bind him by any thing done under his, Fulton's, instructions, or authority, or by any one appointed by him, and acting under his instructions. It further appeared, that McConnell continued to have an interest in the judgment obtained by against complainant, up to the 2d September, 1826; and that he had employed counsel, and had the management of the whole business until the instructions were given to said Fulton by Erwin, a short time before the day on which the money was paid. It also appeared, that said Erwin had notice of the appointment of said Porterfield by Fulton, ta act in the matter for him, before the 2d of September, 1826, and that he did not object to his appointment. It did not appear that the complainant had any notice of the instruction of Erwin to his agent, that nothing out specie would be received. The money received by Fulton appeared to have been paid over to the agent of Erwin, but it did not appear that Erwin had ever received it. The balance of the amount, he had a right to demand, and for which Husbands became accountable, Erwin refused to receive. All which matters and things being heard and understood, and after thereon, had by counsel, his honor is of opinion, that the case made out by the bill is substantially sustained by the proofs in the cause; that, without determining the question, whether the defendant could legally exact the specie under an act of Assembly, of the provisions of which he had availed himself when he redeemed the land from Brittain, and of which he continued to avail himself, in demanding ten per cent. interest upon his advances, and which expressly provided that a payment in bank notes should be sufficient, there are other grounds upon which relief might be granted to the complainant: That, to prevent a forfeiture, a court of chancery would require a party, seeking a benefit under it, to bring himself clearly within the law; that, in this case, the complainant was to be effected, had no notice of any special instructions given to the agent of the defendant, and the payment, as made, in specie, paper, and the assumpsit of Dickson, was received without objection by the agent, as those instructions were substantially pursued, and that full for the redemption of the land. If there had been any material departure from the instructions given, at any one time, they were subsequently admitted by the defendant to have been made by his authority.

It is therefore ordered, adjudged, and decreed, that all the estate, interest, right, and title, which vested in the defendant, James Erwin, by the deed executed to him by James Brittain, bearing date the day of August 21st, 1826, and the payment of any sum of money, advanced for the same, by the said James Brittain, and ten per cent. interest thereon, that the same be divested out of the said James Erwin, and be vested in the said Hugh M. Blake, and his heirs; and that the said James Erwin convey the said tract of land to the said Hugh M. Blake, and his heirs. It is further ordered, adjudged, and decreed, that the said defendant be perpetually enjoined from